Clause 1, the Enacting Formula and the Title were added to the Bill.

KUMARI SAROJ KHAPARDE: Sir, I beg to move:

"That the Bill be passed."

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That the Bill be passed."

The motion was adopted.

THE PARSI MARRIAGE AND DIVORCE (AMENDMENT) BILL, 1986

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The House will take up the Parsi Marriage and Divorce (Amendment) Bill, 1986. Shri H. R. Bhardwaj.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, I move:

"That the Bill further to amend the Parsi Marriage and Divorce Act, 1936, be taken into consideration."

The law relating to marriage and divorce among Parsis is contained in the Parsi Marriage and Divorce Act, 1936. Since the enactment of this Act, no substantial amendments were carried out in view of the declared policy of Government not to effect any changes in the personal laws of the minority communities unless the initiative therefore comes from the minority communities themselves. Such an initiative has now come from the Parsi community in the form of two sets of proposals one from the Chairman, Board of Trustees of the Parsi Panchayats, Bombay and the other from Mrs Meher, Master Moss representing the Federation of Parsi Anjuman of India. The Minorities Commission has also received both these proposals. The Minorities Commission had considered these two sets of proposals and had recommended that since the Bombay Parsi Panchayat is a representative body of the Parsi community and it has taken into consideration the opinions of similar other such bodies within the country, the amendments proposed by the Bombay Parsi Panchayat should be given preference and be adopted.

The proposals were also circulated among the State Governments and the Union Territory administrations for their comments. The majority of the State Governments and Union Territory administrations have recommended the acceptance of the proposed amendments. The Government has, therefore, decided to go ahead with the proposed amendments and as a result thereof has brought forward the present Bill. The main purpose of the Amendments incorporated in the Bill is to bring the provisions of the Parsi Marraige and Divorce Act 1936 in line with the proposals contained in the Hindu Marriage Act, 1955 and the Special Marriages Act, 1954.

The Child Marriage Restraint Act, 1929 was amended in 1978 to provide therein that the marriageable age in the case of male shall be 21 years and in the case of female be 18 years. It is proposed to bring the provision of the Parsi Marriage and Divorce Act 1936 in line with this amendment. Section 3 of the Act, is, therefore, proposed to be amended for that purpose. It has also been proposed to provide therein that the children out of marriages which are declared illegitimate under the Act shall be deemed to be legitimate children on the lines of provisions contained in other marriage Acts. This is to provide for the legitimacy of children born out of such marriages. Sections 19 and 20 of the principal Act make provisions for appointment of seven delegates to help the presiding judge of the Parsi Matrimonial Court in matrimonial matters. Now-a-days, it is difficult to get seven delegates for the purpose. It is therefore, proposed to reduce the number of delegates from seven to five. It has also been proposed that

[Shri H. R. Bhardwaj]

the court can decide the matter relating to interlocutory proceedings alimony, maintenance, matters relating to custody and education of children etc. without the help of the delegates.

Another important amendment proposed is to add a new ground for divorce, the ground of insanity of either of the spouse after the marriage. The existing clause B provides relief on the ground that the defendent is of an unsound mind at the time of his marriage and has been habitually so upto the date of the filing of the suit. The new ground provides relief if insanity supervenes after the marriage. It has also been proposed to insert a further ground of cruelty for obtaining divorce under the Act. Presently cruelty is a ground for a judicial separation under section 34 of the Act. These proposals are on the lines of the provisions contained in the Hindu Marriage Act 1955. Both the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide for divorce by mutual consent. It is thought necessary that when both the spouses are ready to break the marriage tie by mutual consent, they should be allowed to do so. A new section 32 (b) is therefore proposed to be inserted in the principal Act to provide mutual consent as a ground of divorce. It has also been proposed to insert section 32(t) to provide an additional ground for divorce when there is no resumption of co-habitation or restitution of conjugal rights for a period of one year in pursuance of the decree granted by the court.

These are some of the important proposals contained in the Bill. The Bill also contains certain other amendments which are of consequential nature. The proposals are non-controversial and I commend this Bill for consideration of the House.

The question was proposed.

*SHRI N. RAJANGAM (Tamil Nadu): Mr. Vice-Chairman Sir, Originally the Parsi Marriage and Divorce Act was passed in the year 1936. After a long spell of 51 years an amendment bill has been introduced in this august house. There are enough reasons for bringing in such amendments after a gap of five decades. It has been the policy of the Government not to enact any law against the will of any section of people and lest the minority section. Therefore, the Government did not intervene to make any amendment so far letting the community to feel the need for such an amendment.

This very house passed a bill to amend the Muslim Marraige and Divorce Act sometime before. And here is yet another bill on the same direction to provide a comprehensive legislation towards the marriage and divorce of the Parsis. This reiterates the faith in secularism. It is a welcome move, in view of the cruelties and atrocities being committed in the recent times particularly against the women folk. There are Parsi Matrimonial courts in districts as well as state level. The present act envisages for the appointment of five delegates from among Parsis, to aid the Presiding Judge of each court. However, the norms and modalities of appointments and the qualification required for being appointed as delegates have not been made clear. I hope the Government will add a sub-clause to remove these clouds. Great statesmen and social reformers like Raja Ram Mohan Roy pleaded for social reform and wanted to abolish child Marriage. The existing Hindu Marriage Act has provisions for this. Happily, such clause has been provided in this bill too by raising the marriageable age to 21 for males and 18 for females.

The clause that divorce can be sought only on specific and valid grounds and that due maintenance allowance shall be provided to the spouse concerned is really commendable. The section that provides for

*English translation of the original speech delivered in Tamil.

in camera' proceedings of the trial under this act reinforces the traditional faith in matrimonial confidentiality. It will save embarassment to either party and also save the age old tradition from legal abuse.

I wish to refer to another important feature of this act. In section 32, there are two clauses 'G' and 'J' that are contrary in spirit. I quote Section 32:

"Any married person may sue for divorce on any one or more of the following grounds, namely:—

(g) that the dependant has deserted the plaintiff for atlest three years;

(j) that the dependant has ceased to be a Parsi. Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know the fact".

For example, a husband comes to know of the change of religion by her wife only two years after her desertion. Now, both the clauses 'g and 'j' do not allow him to divorce her. Under clause 'g' he has to wait for another year. Under clause 'j', if the wife makes a claim that she changed her religion soon after deserting her husband and that he came to know it at once, the husband becomes a helpless victim of law. This contradiction should be removed at this level itself not paving way for misinterpretation. Otherwise it is a very comprehensive bill and I welcome this on behalf of my party A.I.A.D.M.K. and on my behalf.

Thank you.

3.00 p.m.

श्री केशव प्रसाद शक्ल (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, में पारसी विवाह और विवाह विच्छेद (संशोधन) विधेयक 1987 का समर्थन करता हूं। हमारे संविधान में धर्मनिरपेक्षता का सिद्धांत माना गया है। हमारे देश में अनेकों समुदाय और धर्मों क मानने वाले लोग हैं। उनके रीति रिवाज, सामाजिक और धार्मिक उत्सव तथा त्यौहार सब अलग अलग हैं। उनमें किसी में सरकारी हस्तक्षेप न करने को हमारी नीति है। इस लिहाज से यह जो पारसी अधिनियम है यह पारसियों का एक निजी कानून है और यह इस समुदाय की परम्पराओं और उनकी धार्मिक आस्थाओं के अनुकूल होना चाहिए। सन 1936 में अंग्रेजी शासनकाल में पारसी मैरिज और डाइवोर्स एक्ट बना और उसके अनुसार, उनके विवाह और विवाहोच्छेद के संबंध में नियमन किया गया। आज उसको 50 साल व्यतीत हो चुके है। अब समाज बहुत आगे बढ़ गया है और देश में आर्थिक विकास के साथ साथ लोगों के सामाजिक मूल्य भी बदल गये हैं। बहुत से नये कानून भी इस तरह के बने हैं। मुसलमानों के निजी कानूनों में परिवर्तन हुआ है, हिन्दू मैरिज एक्ट भी सन 55 में लागू हुआ। इन सबके अनुरूप ही पारसी मैरिज एक्ट बनाने के लिए यह नया संशोधन विधेयक लाया गया है जिसका में स्वागत करता हूं।

यह पारसियों का एक व्यक्तिगत कानून है। इस पर शासन अपनी तरफ से कुछ नहीं करना चाहता था और जैसा कि मैंने बताया कि सामाजिक और धार्मिक मांगों के अनुसार ही समाज के बहुसंख्यक लोगों के द्वारा मांग करने पर उसमें विचार किया जा सकता था। तो इस पर पारसी समुदाय के लोगों द्वारा इस पुराने कानून में संशोधन की मांग की गयी और जो अल्पसंख्यक आयोग बनाया गया उसने भी इस मांग पर विचार किया और उसने भी यह सिफारिश की कि अब सन 36 के कानून में संशोधन किया जाना आवश्यक है। इस प्रकार यह संशोधन लाया गया जो स्वागत योग्य है।

इस प्रकार से इस विधेयक में पारसी समाज की मांग के अनुसार जो संशोधन किया जा रहा है वह हर दृष्टि से उचित है। विधेयक में जो मुख्य बातें हैं उनकी ओर मैं सदन का ध्यान आकर्षित करता हूं। सन 1936 के अधिनियम में विवाह के आयु पुरूष और महिला दोनों के लिए 21 वर्ष थी। उससे कम आयु वालों के विवाह के लिए

(श्री केशव प्रसाद शुक्ल)

उनके पिता या संरक्षक की सहमति होनी आवश्यक है । अब इस नये कानून में संशोधन विधेयक के द्वारा विवाह के लिए पुरुष की आयु 21 वर्ष और महिला की आयु 18 वर्ष की जाकर उसकी न्यूनतम सीमा बांध दी गयी है । इससे कम आयु के विवाह कानूनन अवैध होंगे । सन 1936 के कानून में पुरुष और महिला के विवाह के लिए 21 वर्ष से कम अवस्था में पिता या संरक्षक की अनुमति का प्रावधान था अब उसे भी हटाया जा रहा है । अब पुरुष एवं महिला की आयु 21 तथा 18 वर्ष की होना अनिवार्य है । इससे कम उम्र में किया गया विवाह विधि सम्मत नहीं माना जायेगा और वह अवैध एवं शून्य होगा । जब दोनों बालिग हैं तो संरक्षक की सहमति की आवश्यकता नहीं है । इसीलिए यह संशोधन लाया गया है जो उचित है ।

इस विधेयक के द्वारा पुनर्विवाह के सम्बन्ध में भी 1936 के कानून में संशोधन किया जा रहा है । इसके अनुसार पति या पत्नी के जीवन काल में दूसरा विवाह न हो सकेगा जब तक कानूनन विवाह विच्छेद या विधि पूर्वक शून्य या विघटित घोषित न किया गया हो अर्थात पति या पत्नी की मृत्यु हो जाने पर अथवा न्यायालय से विवाह के शून्य घोषित हो जाने पर पुनर्विवाह हो सकेंगे । यह संशोधन भी समयानुकूल और बहुत उपयुक्त है ।

सन 1936 के अधिनियम में विवाह के प्रमाणपत्र तथा रजिस्ट्रेशन में 21 वर्ष की आयु में कम आयु के विवाह में पिता या संरक्षक के हस्ताक्षर आवश्यक थे किन्तु अब उसकी आवश्यकता समाप्त की जा रही है ।

पर्व अधिनियम 1936 की धारा 19 और 20 में पारसी विवाह न्यायालय में सात डेलीगेटस हों ऐसा एक प्रावधान था अब उसके स्थान पर पांच डेलीगेट किया जा रहा है । किंतु अंतवर्ती आवेदन, कार्यवाहियों और निर्वाह व्यय और भरणपोषण, संतान की अभिरक्षा भरणपोषण और शिक्षा तथा अन्य मामले, नियमित पुनर्वास से भिन्न सभी मामलों और कार्यवाहियों में डेलीगेटस की आवश्यकता न होगी । इसी प्रकार अधिनियम 1936 की धारा 25, 26, 29 और 32 में भी आवश्यक संशोधन किये जा रहे हैं ।

विवाह विच्छेद के आधारों में पूर्व अधिनियम 1936 की धारा 32 में बाद के दो वर्ष पूर्व से विकृत चित्त या मानसिक विकास से पीड़ित रहने वालों को भी विवाह विच्छेद का आधार बनाया जा रहा है, और मानसिक विकार तथा मनोविकार का स्पष्टीकरण भी किया गया है ।

इसी प्रकार विवाह विच्छेद के "बाद" के लिये नई धारा 32 (क) और 32 (ख) की अंतर्स्थापना करने का प्रावधान इस विधेयक में किया जाकर विवाह विच्छेद को व्यापक बनाया गया है ।

इस विधेयक के पुराने अधिनियम 1936 की धारा 32 में संशोधन करके धारा 32 (ख) (1) के द्वारा पारस्परिक सहमति से विवाह विच्छेद का प्रावधान भी रखा जा रहा है, जो उचित है ।

इस विधेयक के द्वारा वादकालीन निर्वाह व्यय के संबंध में भी पुराने अधिनियम 1936 की धारा 39, 40 के स्थान पर नई धारा 39, 40 रखी गई है ।

1936 के मूल अधिनियम की धारा 43 में वादों की सुनवाई बंद कमरों में होने का प्रावधान था, किंतु कार्यवाही का मुद्रित या प्रकाशित किया जाना प्रतिबंधित नहीं था और उसके लिये कोई दण्ड व्यवस्था नहीं थी । अब इस विधेयक के द्वारा मूल अधिनियम की धारा 43 में संशोधन किया गया है, जिसके अनुसार प्रत्येक वाद का विचारण बंद कमरे में किया जायेगा और न्यायालय के ऐसे किसी निर्णय के अलावा जो

न्यायालय की पूर्व अनुमति से प्रकाशित किया जाता है, ऐसे किसी भी मामले से संबंधित सामग्री को मुद्रित या प्रकाशित करना किसी भी व्यक्ति के लिये विधि-सम्मत न होगा।

यह बहुत उचित कदम है। इसमें जो पति-पत्नी का संबंध है, उसको प्रकाशित नहीं करना चाहिये बिना न्यायालय की अनुमति से और बंद कमरे में जो सुनवाई करने का प्रावधान रखा गया है, यह बहुत ही उचित है।

यदि कोई व्यक्ति इसका उल्लंघन करेगा, तो वह एक हजार रुपये तक से अब दंडित हो सकेगा। इस प्रकार दण्ड का प्रावधान किया जाना भी बहुत उचित है।

इसी तरह मूल अधिनियम की धारा, 44, 45, 46, 47, 48 और 49 में भी आवश्यक संशोधन किया जाकर समाज की आकांक्षाओं को पूर्ति की गई है।

महोदय, मैं इस विधेयक का स्वागत करता हूं और आपको धन्यवाद देता हूं कि आपने मुझे अपने विचार इस विधेयक पर प्रकट करने के लिये अवसर दिया। धन्यवाद।

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Yes, the Minister now.

(SHRI H. R. BHARDWAJ): Sir, as I sumitted on the earlier occasion when I spoke while introducing this Bill, this is a matter which has been brought up before the house to make the Parsi laws up-to-date, the laws on Parsi marriage and divorce. So, when the question of age was considered, it was thought proper that the age of marriage should be increased and, under clause 2 of the Bill, the provision now is that the age is 21 years for the made and 18 years for the female.

The other important amendment is also regarding the number of delegates. I will briefly touch upon the question of delegates because, as I have already submitted, this is a personal law of the Parsi community and the Government has been considering this proposal on the initiative taken by the community itself. When this proposal was circulated tmongst the institutions concerned with the Parsi laws, the Anjumans and the Panchayats as well as the Minorities Compission, they also supported this and have said that it should be brought in line with the Special Marriage Act and the Hindu Marriage Act which are the recent enactments on marriage. So this is a measure which was suggested by the Parsis and which is in line with other marriage laws.

One point was raised regarding the proviso to sub-section (T) of section 32. Kindly see, this proviso is attached only to (j), not to (g), because wherever there is a ground of divorce given in section 32 the proviso is attached to that sub-section only. It does not go with other sub-sections. A check has been kept for limitation purposes. Similarly, the new ground of insanity, as I submitted, was not available earlier; it has now been given as also cruelty and mutual consent. Divorce by mutual consent is the result of a good debate in the society and it has been inserted even in other laws. Parsis have agreed to this amendment because they feel that when the parties are not able to live together peacefully and marriage cannot continue it is better to break it. So this ground has also been agreed to.

All these amendments which have been brought forward, I repeat, are pursuant to the desires of the community itself. So the Parsis have brought these amendments and the Government has only implemented the will of that community. So when these amendments will be approved they will be absolutely in line with the Special Marriage Act and the Hindu Marriage Act which are Modern legislations.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

[Shri H. Hanumanthappa]

"That the Bill further to amend the Parsi Marriage and Divorce Act, 1986, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Now we shall take up clause-by-clause consideration of the Bill.

Clauses 2 to 8 were added to the Bill.

Clause 9 (Insertion of new sections 32A and 32B).

SHRI H. R. BHARDWAJ: Sir, I beg to move:

"That at page 3,—

(i) line 27 for the figure "1986" the figure 1987 be substituted.

(ii) line 44 for the figure "1986" the figure 1987 be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9 as amended was added to the Bill.

Clauses 10 to 20 were added to the Bill.

Clause 1 (Short title and commencement).

SHRI H. R. BHARDWAJ: Sir, I beg to move:

"That at page 1 line 4, for the figure 1986 the figure 1987 be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That Clause 1, as amended stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula.

SHRI H. R. BHARDWAJ: Sir, I beg to move:

"That at page 1, line 1, for the word "Thirty-seventh" the word "Thirty-eighth" be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): I shall now put the Enacting Formula, as amended, to vote.

The question is:

"That the Enacting Formula, as amend, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended was added to the Bill.

The Title was added to the Bill.

SHRI H. R. BHARDWAJ: Sir, I move:

"That the Bill, as amended, be passed."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The House stands adjourned till 11 O' clock tomorrow.

The House then adjourned at seventeen minutes past three of the clock, till eleven of the clock, on Tuesday, the 4th August, 1987.